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### MEMORANDUM

TO: Bruce Scott, P.E., Director  
Division of Waste Management

FROM: Emily Caudill   
Regulations Compiler

RE: Acknowledgement of Proposed Administrative Regulations and/or Amendments -  
401 KAR 42: 005, 401 KAR 42:011, 401 KAR 42:020, 401 KAR 42:030, 401 KAR 42:040, 401  
KAR 42:050, 401 KAR 42:060, 401 KAR 42:070, 401 KAR 42:072, 401 KAR 42:080, 401 KAR  
42:090, 401 KAR 42:200, 401 KAR 42:250, 401 KAR 42:290, 401 KAR 42:300, 401 KAR  
42:314, 401 KAR 42:316, 401 KAR 42:330, 401 KAR 42:335, 401 KAR 42:340, 415 KAR  
1:051

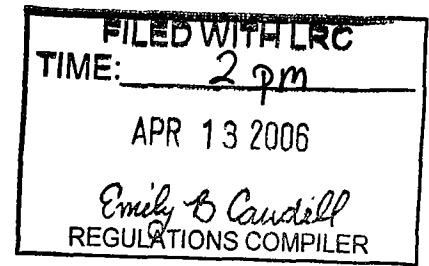
DATE: April 13, 2006

A copy of the administrative regulations listed above are enclosed for your files. These administrative regulations are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **June 2006**, meeting. We will notify you of the date and time of this meeting when it has been scheduled.

Pursuant to KRS 13A.280, if a public hearing is held or you receive written comments during the public comment period, the Statement of Consideration for these administrative regulations is due **by noon on June 15, 2006**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to public hearings and the Statement of Consideration.

If you have any questions, please do not hesitate to contact me at (502) 564-8100.

Enclosures



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department for Environmental Protection

Division of Waste Management

(Amendment)

401 KAR 42:005. Definitions related to 401 KAR Chapter 42.

RELATES TO: KRS 224.01, 224.10, 224.60, 40 CFR Part 281, 42 U.S.C. 6991c

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 40 CFR Part 280, Part 281, 42 U.S.C. 6991c

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the cabinet to regulate underground storage tank (UST) systems by requiring registration [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other standards to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. 401 KAR Chapter 42 identifies requirements for UST systems. This administrative regulation defines terms used throughout 401 KAR Chapter 42. [~~40 KAR Chapter 42.~~]

Section 1. Definitions. (1) "Aboveground release" means any UST system release to the surface of the land or to surface water. This includes, but is not limited to, UST system releases

1 from the aboveground [~~above-ground~~] portion of a UST system and aboveground releases  
2 associated with overfills and transfer operations as the regulated substance moves to or from a  
3 UST system.

4 (2) "Actual cost" means the cost incurred by the person performing the services or  
5 supplying the products.

6 (3) [(2)] "Ancillary equipment" means any devices used to distribute, meter, or control  
7 the flow of regulated substances to and from a UST system, including, but not limited to, piping,  
8 fittings, flanges, valves, and pumps.

9 (4) "Assets" is defined by KRS 224.60-120(3).

10 (5) [(3)] "Background" means the concentration of substances consistently present in the  
11 environment at, or regionally proximate to, a UST system release, but outside of the influence of  
12 the UST system release. There are two (2) types of background as follows:

13 (a) Natural background is the amount of naturally-occurring substances in the  
14 environment, exclusive of that from anthropogenic sources; and

15 (b) Ambient background is the amount of both naturally-occurring substances and  
16 ubiquitous anthropogenic substances in the environment at levels that are representative of the  
17 region surrounding the UST facility [~~site~~] and at levels not attributable to activities on the  
18 property.

19 (6) [(4)] "Belowground release" means any UST system release to the subsurface of the  
20 land or to groundwater. This includes, but is not limited to, UST system releases from the  
21 belowground portions of a UST system and belowground releases associated with overfills and  
22 transfer operations as the regulated substance moves to or from a UST system.

1        (7) [(5)] "Beneath the surface of the ground" means, for purposes of identifying an  
2        underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or  
3        otherwise covered with earthen materials.

4        (8) "Bodily injury and property damage" is defined by KRS 224.60-115(1).

5        (9) [(6)] "Cathodic protection" means a technique to prevent corrosion of a metal surface  
6        by making that surface the cathode of an electrochemical cell. For example, a UST system can be  
7        cathodically protected through the application of either galvanic anodes or impressed current.

8        (10) [(7)] "Cathodic protection tester" means a person who:

9        [(a)] Can demonstrate an understanding of the principles and measurements of all  
10       common types of cathodic protection systems as applied to buried or submerged metal piping  
11       and tank systems. [; and]

12       [(b)] At a minimum, a cathodic protection tester has education and experience in soil  
13       resistivity, stray current, structure-to-soil potential, and component electrical isolation  
14       measurements of buried metal piping and tank systems.

15       (11) "Certified company" means a person certified pursuant to 401 KAR 42:316.

16       (12) "Certified Contractor" means a person certified pursuant to 401 KAR 42:314.

17       (13) [(8)] "Change in service" means continued use of a UST system that previously  
18       stored a regulated substance to store a nonregulated substance.

19       (14) "Claim" is defined by KRS 224.60-115(3).

20       (15) [(9)] "Compatible" means the ability of two (2) or more substances to maintain their  
21       respective physical and chemical properties upon contact with one another for the design life of  
22       the UST system under conditions likely to be encountered in the UST system.

1        (16) ~~[(10)]~~ "Connected piping" means all underground piping including valves, elbows,  
2 joints, flanges, and flexible connectors attached to a UST system through which regulated  
3 substances flow. For the purpose of determining how much piping is connected to any individual  
4 UST system, the piping that joins two (2) UST systems shall be allocated equally between them.

5        (17) ~~[(11)]~~ "Consumptive use" means, with respect to heating oil, consumed on the  
6 premises where stored.

7        (18) ~~[(12)]~~ "Contamination" means degradation in the quality of surface water, sediment,  
8 groundwater, air, soil, or bedrock as a result of human activities.

9        (19) "Contract" means the legally binding written agreement for performance of  
10 corrective action entered into by an owner or operator and a contracting company certified  
11 pursuant to 401 KAR 42:316.

12        (20) ~~[(13)]~~ "Corrective action":

13        (a) For purposes of 401 KAR 42:250, 42:290, 42:300, 42:314, 42:316; 42:330, 42:335  
14 and 42:340, is defined in KRS 224.60-115; or

15        (b) For purposes of 401 KAR 42:011, 42:020, 42:030, 42:040, 42:050, 42:060, 42:070,  
16 42:080, 42:090, and 42:200, means those actions necessary to protect human health and the  
17 environment in the event of a UST system release. Corrective action may include remedial  
18 actions to clean up contaminated groundwater, surface waters or soil, actions to address residual  
19 effects after initial corrective action is taken, and actions taken to restore or replace potable water  
20 supplies. Corrective action may also include actions necessary to monitor, assess, and evaluate a  
21 UST system release, as well as actions necessary to monitor, assess, and evaluate the  
22 effectiveness of remedial action after a UST system release has occurred. ~~[those actions~~

1 ~~necessary to protect human health and the environment in the event of a release from a UST~~  
2 ~~system.]~~

3 (21) "Corrective action agreement" means a written agreement for reimbursement  
4 between the cabinet, the owner or operator and the certified contractor, which applies to  
5 corrective action or interim corrective action to be performed.

6 (22) [(14)] "Corrosion expert" means a person accredited or certified as being a corrosion  
7 expert by the National Association of Corrosion Engineers (NACE International), or a  
8 professional engineer registered by the Kentucky State Board of Registration for Professional  
9 Engineers and Land Surveyors with certification or licensing that includes education and  
10 experience in corrosion control of buried or submerged metal piping systems and metal tanks.

11 (23) [(15)] "Dielectric material" means a material that does not conduct direct electrical  
12 current.

13 (24) "Division" is defined by KRS 224.60-115(6).

14 (25) [(16)] "Domestic-use well, spring, cistern, or well head protection area" means a  
15 well, spring, cistern, or well head protection area currently used or potentially used by humans  
16 for personal, commercial, or agriculture purposes.

17 (26) [(17)] "Electrical equipment" means underground equipment containing dielectric  
18 fluid used for the operation of equipment such as transformers and buried electrical cable.

19 (27) [(18)] "Empty" means all regulated substances have been removed from the UST  
20 system using commonly employed practices so that no more than two and five-tenths (2.5)  
21 centimeters (one (1) inch) of residue, or three-tenths (0.3) percent by weight of the total capacity  
22 of the UST system, remain in the system.

1       (28) "Entry level" means an amount equal to the financial responsibility the owner or  
2       operator shall establish and maintain in accordance with KRS 224.60-120.

3       (29) [(19)] "Environmentally sensitive feature" means surface waters and wetland areas.  
4       The term shall not include road-side ditches or manmade drainage ways that do not discharge to  
5       surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

6       (30) [(20)] "EPA identification number" means the number assigned by the U.S. EPA or  
7       the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal  
8       facility.

9       (31) [(21)] "Excavation zone" means the volume containing the UST system and backfill  
10      material bounded by the ground surface, walls, and floor of the pit and trenches into which the  
11      UST system is placed at the time of installation.

12      (32) [(22)] "Existing UST system" means a UST system used to contain an accumulation  
13      of regulated substances or for which installation has commenced on or before December 22,  
14      1988. Installation is considered to have commenced if:

15      (a) The owner or operator has obtained all federal, state, and local approvals or permits  
16      necessary to begin physical construction of the UST facility [site] or installation of the UST  
17      system; and

18      (b)1. A continuous, physical [~~on-site physical~~] construction or installation program has  
19      begun at the UST facility; or

20      2. The owner or operator has entered into contractual obligations, that cannot be canceled  
21      or modified without substantial loss, for physical construction at the UST facility [site] or  
22      installation of the UST system to be completed within a reasonable time.

1        (33) [(23)] "Facility" is defined by KRS 224.60-115(7). [or "site" means the property on  
2 which the UST system is located.]

3        (34) [(24)] "Farm tank" means a tank located on a tract of land devoted to the production  
4 of crops (including nurseries) or raising animals (including fish hatcheries) and associated  
5 residences and improvements.

6        (35) [(25)] "Federal agency" means any department, agency, or other instrumentality of  
7 the federal government, any independent agency or establishment of the federal government,  
8 including any government corporation, and the U.S. Government Printing Office.

9        (36) "Federal regulations" is defined by KRS 224.60-115(8).

10       (37) "Financial ability" means the capacity of a petroleum storage tank owner or operator  
11 to finance the performance of corrective action.

12       (38) [(26)] "Flow-through process tank" means a tank that forms an integral part of a  
13 production process through which there is a steady, variable, recurring, or intermittent flow of  
14 materials during the operation of the process. Flow-through process tanks do not include tanks  
15 used for the storage of materials prior to their introduction into the production process or for the  
16 storage of finished products or by-products from the production process.

17       (39) [(27)] "Free product" is defined by KRS 224.60-115(9) [KRS 224.60-115(8)].

18       (40) "Guarantor" is defined by KRS 224.60-120(4).

19       (41) [(28)] "Gathering lines" means pipelines, equipment, facilities, and buildings used in  
20 the transportation of oil or gas during oil or gas production or gathering operations.

21       (42) [(29)] "Groundwater" means the subsurface water occurring in the zone of saturation  
22 beneath the water table, and perched water zones below the B-soil horizon, including water  
23 circulating through fractures, bedding planes, and solution conduits.



1           (43) [(30)] "Hazardous substance UST system" means a UST system that contains [÷

2           (a) ~~Contains~~] a hazardous substance identified in Section 101(14) of CERCLA (but not  
3 including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through  
4 39), or contains a mixture of this type of hazardous substance and petroleum [~~petroleum;~~] and is  
5 not a petroleum UST system.

6           [(b) ~~Is not a petroleum UST system.~~]

7           (44) [(31)] "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy,  
8 No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils  
9 (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1)  
10 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or  
11 furnaces.

12           (45) [(32)] "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop  
13 mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and  
14 other similar devices.

15           (46) [(33)] "Hydrogeologically downgradient" means in the direction from a point of  
16 higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or  
17 piezometers constructed to the same depth, or in the direction from a point where a higher water  
18 table elevation exists to a point where a lower water table elevation exists, as defined by wells or  
19 piezometers.

20           (47) [(34)] "Hydrogeologically upgradient" means in the direction from a point of lower  
21 hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers  
22 constructed to the same depth, or in the direction from a point where a lower water table

elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(48) [(35)] "Leak-detection system" means a method of monthly monitoring capable of detecting a failure in a UST system of either the primary or secondary containment system, or capable of detecting the presence of a UST system release of a regulated substance outside the UST system.

(49) [(36)] "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(50) [(37)] "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(51) [(38)] "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(52) [(39)] "Motor fuel" is defined by KRS 224.60-115(12) [~~KRS 224.60-115(11)~~].

(53) "Net worth" is defined by KRS 224.60-120(3).

(54) [(40)] "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(55) [(41)] "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988.

(56) [(42)] "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(57) "Occurrence" is defined by KRS 224.60-115(13).

(58) "Off-site" [~~(43) "Off-site"~~] means any area beyond the Point of compliance.  
[~~property other than the underground storage tank facility.~~]

(59) "On-site" means the area within the Point of compliance.

(60) [(44)] "On the premises where stored" means, with respect to heating oil, UST  
systems located on the same property where the stored heating oil is used.

(61) [(45)] "Operation" means the storage and dispensing of a regulated substance from a  
UST system.

(62) [(46)] "Operational life" means the period beginning when installation of the UST  
system has commenced and ending when the UST system is closed under 401 KAR 42:070 [~~401~~  
~~KAR 42:070 or 401 KAR 42:071.~~]

(63) [(47)] "Operator" means any person in control of, or having responsibility for, the  
daily operation of the UST system.

(64) "Original invoice" means an original or duplicate copy of an itemized list of all  
products or services obtained, with an account of all costs, provided to the contractor or owner or  
operator by the person supplying the products or providing the services.

(65) [(48)] "Overfill release" means a UST system release that occurs if a UST system is  
filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(66) [(49)] "Owner" means:

(a) In the case of a UST system in use on November 8, 1984, or brought into use after  
that date, any person who owns a UST system used for storage, use, or dispensing of a regulated  
substance; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use.

~~(67)~~ [(50)] "Permanent closure" means either removing the UST system from the ground or filling the UST system with an inert solid material or a combination of both methods.

~~(68)~~ [(51)] "Permanently closed" means a UST system was:

(a) Closed prior to December 22, 1988 in accordance with the requirements of the Kentucky Fire Marshal, in accordance with applicable industry standards when closure occurred, and in a manner that prevents any future use of the UST system;

(b) Closed after December 22, 1988, but prior to December 19, 1990, in accordance with 40 CFR 280.71 through 280.74;

(c) Closed after December 19, 1990, but prior to April 18, 1994, in accordance with administrative regulations in effect at that time;

(d) Closed after April 18, 1994, but prior to January 1, 1996, in accordance with the emergency administrative regulations that took effect on February 15, 1994; or

(e) Closed after January 1, 1996 in accordance with 401 KAR 42:070 or 401 KAR 42:071 in effect at that time.

(f) Closed in accordance with 401 KAR 42:070 after the effective date of this administrative regulation.

~~(69)~~ [(52)] "Person" is defined by KRS 224.60-115(14).

~~(70)~~ [(53)] "Petroleum" is defined by KRS 224.60-115(15).

(71) "Petroleum storage tank" is defined by KRS 224.60-115(16);

(72) "Petroleum storage tank operator" is defined by KRS 224.60-115(17);

1        (73) "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

2        (74) [(54)] "Petroleum UST system" means a UST system that contains petroleum or a  
3        mixture of petroleum with de minimis quantities of other regulated substances. The term includes  
4        those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum  
5        solvents, and used oils.

6        (75) [(55)] "Pipe" or "piping" means a hollow cylinder or tubular conduit that is  
7        constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of  
8        these types of materials).

9        (76) [(56)] "Pipeline facilities" [(including gathering lines)] means new and existing  
10       pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering  
11       lines.

12       (77) [(57)] "Point of compliance" means the property boundaries of the UST facility.

13       (78) "Pre-established fixed cost" means the cost determined by the cabinet to be  
14       reimbursed from the Petroleum Storage Tank Environmental Assurance Fund for actions taken  
15       as a result of a written directive from the cabinet or corrective action agreement.

16       (79) "Ranking system" means the system for determining extent of environmental harm  
17       and financial ability, as established by 401 KAR 42:290;

18       (80) "Registration" or "register" shall have the same meaning as "notification" or  
19       "notice", as used in 40 CFR Part 280 Subpart B.

20       (81) [(58)] "Regulated substance" is defined by KRS 224.60-100(2)

21       (82) [(59)] "Release" is defined by KRS 224.60-115(20). [means any spilling, leaking,  
22       emitting, discharging, escaping, leaching, or disposing of a regulated substance into  
23       groundwater, surface water, surface or subsurface soils, or interstitial space between a UST

1 ~~system and its secondary barrier or secondary containment. The term shall not include spilling,~~  
2 ~~leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by~~  
3 ~~Kentucky or federal law.]~~

4 (83) [(60)] "Release detection" means a method of determining whether a UST system  
5 release ~~[of a regulated substance] has occurred, [from the UST system into the environment or~~  
6 ~~into the interstitial space between a UST system and its secondary barrier or secondary~~  
7 ~~containment.]~~

8 (84) [(61)] "Repair" means to restore a UST system component that has caused a UST  
9 system release of a regulated substance from a UST system.

10 (85) [(62)] "Residential tank" means a tank located on property used primarily for  
11 dwelling purposes.

12 (86) [(63)] "Residual tank materials" means any accumulated tank water, bottom  
13 sediments, mixture of product and water, or other material remaining in a tank after removal of  
14 tank contents.

15 (87) "Secretary" means the Secretary of the Environmental and Public Protection  
16 Cabinet.

17 (88) [(64)] "Septic tank" means a watertight covered receptacle designed to receive or  
18 process, through liquid separation or biological digestion, the sewage discharged from a building  
19 sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled  
20 solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

21 (89) [(65)] "Storm-water or wastewater collection system" means piping, pumps,  
22 conduits, and any other equipment used to collect or transport the flow of surface water run-off

1 resulting from precipitation or domestic, commercial, or industrial wastewater to or from  
2 retention areas or any areas where treatment is designated to occur.

3 (90) [~~(66)~~] "Surface impoundment" means a natural topographic depression, manmade  
4 excavation, or diked area formed primarily of earthen materials (although it may be lined with  
5 manmade materials) that is not an injection well.

6 (91) [~~(67)~~] "Surface water" means those waters having well-defined banks and beds,  
7 either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands;  
8 and any subterranean waters flowing in well-defined channels and having a demonstrable  
9 hydrologic connection to the surface. Effluent ditches and lagoons used for waste treatment that  
10 are situated on property owned, leased, or under valid easement by a permitted discharger are not  
11 considered to be surface waters of the Commonwealth.

12 (92) [~~(68)~~] "Tank" means a stationary device designed to contain an accumulation of  
13 regulated substances and constructed of nonearthen materials (for example, concrete, steel,  
14 plastic, or a combination of these materials) that provide structural support.

15 (93) [~~(69)~~] "Tank contents" means any accumulated tank water, bottom sediments, or  
16 mixture of product and water that is removed from a tank at one (1) time by the same method  
17 and that is accepted by a recycling facility.

18 (94) [~~(70)~~] "Temporary closure" means taking a UST system out of operation pursuant to  
19 the requirements of 401 KAR 42:070 [~~Section 3~~].

20 (95) "Third party" is defined by KRS 224.60-115(22).

21 (96) [~~(71)~~] "Underground area" means an underground room, such as a basement, cellar,  
22 shaft or vault, providing enough space for physical inspection of the exterior of the UST system  
23 situated on or above the surface of the floor.

1           (97) [(72)] "Underground utility conduits" means any manmade underground conduit  
2 installed for utility purposes, ~~[either on or off site]~~.

3           (98) [(73)] "Upgrade" means the addition of or retrofitting of UST system components to  
4 improve the ability of a UST system to prevent ~~[the]~~ a UST system release. ~~[of a regulated~~  
5 ~~substance.]~~ Examples of upgrades include the addition of cathodic protection, improvements to  
6 the interior lining, and improvements of spill and overfill controls.

7           (99) "UST facility" or "site" means, with respect to any owner or operator, all UST  
8 systems which are owned or operated by an owner or operator and are located on a single parcel  
9 of property or on any contiguous or adjacent property.

10          (100) [(74)] "UST system", "tank system", or "underground storage tank system" means  
11 an underground storage tank (as defined in KRS 224.60-100), connected underground piping,  
12 underground ancillary equipment, and containment system, if any.

13          (101) "UST system release" means any spilling, leaking, emitting, discharging, escaping,  
14 leaching, or disposing of a regulated substance from a UST system into groundwater, surface  
15 water, surface or subsurface soils, or interstitial space between a UST system and its secondary  
16 barrier or secondary containment. The term shall not include spilling, leaking, emitting,  
17 discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or  
18 federal law.

19          (102) "UST system release detection" means a method, that complies with the  
20 requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.

21          (103) [(75)] "Wastewater treatment tank" means a tank that is designed to receive and  
22 treat an influent wastewater through physical, chemical, or biological methods.



1           Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by  
2 context, acronyms and abbreviations used in 401 KAR Chapter 42 shall have the meaning as  
3 identified in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations.	
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.)
<u>CFR</u> <del>[C.F.R.]</del>	Code of Federal Regulations
DEP	Kentucky Department for Environmental Protection
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
SARA	Superfund Amendments and Authorization Act of 1986
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
UST	Underground Storage Tank

401 KAR 42:005 is approved for filing.

4-12-2016

Date

John W. Clay

John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Bruce Scott, P. E., Director  
Division of Waste Management  
14 Reilly Road  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Bruce.Scott@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:005

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: Defines terms, acronyms, and abbreviations used in 401 KAR Chapter 42.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms, in the manner they are used, in 401 KAR Chapter 42.

(c) How this administrative regulations conforms to the content of the authorizing statutes: The regulations of 401 KAR Chapter 42 are needed to implement the Underground Storage Tank Program established in KRS 224.60.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow accurate interpretation of 401 KAR Chapter 42 by defining terms that have meanings unique to the Underground Storage Tank (UST) program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will add definitions related to the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) that were previously included in 415 KAR 1:050.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because after the recodification of 415 KAR Chapter 1 into 401 KAR Chapter 42. Those terms defined in title 415 of the Kentucky Administrative Regulations must be integrated into the existing 401 KAR Chapter 42.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms by adding clarity to the definitions contained in 401 KAR Chapter 42, which is the chapter that governs the underground storage tank program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will allow for correct understanding of the defined terms used within the regulations contained in 401 KAR Chapter 42.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky,

approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment will not alter the definitions that are currently used by these entities. It simply consolidates the definitions used for UST systems and petroleum storage tanks under 401 KAR 42:005.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no cost associated with implementation of this regulation.
- (b) On a continuing basis: There will be no additional costs associated with regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through federal grants and the restricted funds described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owners and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:005

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impact from this administrative regulation.